



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200919063

FEB 10 2009

Uniform Issue List: 408.03-00

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

SET:EP:R:T4

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Form A = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Account F = XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXX
Financial Institution M = XXXXXXXXXXXXXXXXXXXX
Bank G = XXXXXXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This is in response to your request dated June 6, 2008, as supplemented by correspondence dated November 18, 2008, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

XXXXXXXXXXXXXXXXXXXXX

The following facts and representations have been submitted under penalty of perjury in support of Taxpayer A's request.

Taxpayer A, age 77, represents that he received a distribution from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to a mistake made by Financial Institution M which resulted in Amount D being deposited into Account F, a non-IRA CD, where it still remains. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A represents that when IRA X, which was maintained at Bank G, matured on Date 1, he requested a distribution of Amount D with the intent of rolling Amount D directly into another IRA at another Financial Institution to obtain a higher interest rate. On the same day, Taxpayer A took the distribution by check to Financial Institution M and reinvested the entire amount into a new certificate of deposit (CD). Taxpayer A intended to deposit Amount D into an IRA CD. Financial Institution M did not set up his new CD as an IRA account even though the front of the check indicated that the funds had been distributed from IRA X; and Form A, the Form used to open the new account, was entitled Share/IRA Certificate. Instead Financial Institution M placed Amount D into Account F, a non-IRA CD. Taxpayer A represents that he did not discover the error until Date 2, when he brought his tax records to his tax preparer.

Based upon the foregoing facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of

such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any the time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with Taxpayer A's assertion that his failure to accomplish a timely rollover was due to a mistake made by Financial Institution M which resulted in Amount D being deposited into Account F, a non-IRA CD.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the date of this

XXXXXXXXXXXXXXXXXXXXXXX

200919063

ruling to contribute Amount D to an IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed to Taxpayer A by section 401(a)(9) of the Code.

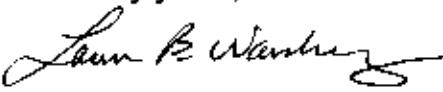
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact XXXXXXXXXX, ID Number XXXXXXXX, at XXXXXXXXXX. Please address all correspondence to
SE:T:EP:RA:T4

Sincerely yours,

for 
Donzeli H. Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of letter ruling
Notice of Intention to Disclose